

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-2, 4-5, 7-10, 13-15, 17-18, 20-25, 27, 28, 31, and 33-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Wallace et al. (USPN 5,951,497).

Wallace et al. discloses a catheter comprising a first lumen (332), a second lumen (416), an inflation lumen (330), a venting mechanism (258), and a balloon member (342) (See Figures 14-17 and entire reference).

### ***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-2, 4-5, 7-10, 13-15, 17-18, 20-25, 27, 28, 31, and 33-36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yuji (JPO – 08215303 A [in IDS]) as applied to claims above, and further in view of Wallace et al. (USPN 5,951,497).

Yuji discloses a first lumen – main lumen (9), a second lumen – sump lumen (15), a third lumen – inflation lumen (6), and a venting mechanism (20), which is a

valve, but fails to teach the venting mechanism being a porous element that is gas permeable and liquid impermeable (Figures 1, 3, 6a and entire reference).

Wallace et al. discloses a similar device with multiple lumens and a porous venting mechanism (258) as well as the benefit of such an element (Column 7).

Therefore at the time of the invention it would have been obvious for one of ordinary skill in the art to combine the device of Yuji with the teachings of Wallace et al. because Wallace et al. discloses the benefit of the porous venting element to be used as a venting means so that the body cavity will be able to release an excess air pressure that has build up in the cavity through the catheter lumen (Column 7).

### ***Response to Arguments***

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection as well as not being persuasive.

The applicant is arguing functional language and intended use. The catheter of Wallace et al. would be capable of performing those functions claimed since prior art structure is identical to claimed structure, therefore the examiner determines from the prior art and the MPEP section 2114 section that the catheter of Wallace et al. could be placed in the stomach as well as vent enteric gases.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MATTHEW F. DESANTO whose telephone number is (571)272-4957. The examiner can normally be reached on Monday-Friday 9:30-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nick LUCCHESI can be reached on (571) 272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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